



January 7, 2000

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
300 N. Lorraine, Room 320
P. O. Box 1152
Midland, Texas 79702-1152

OR2000-0080

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132416.

The City of Midland (the “city”) received a request from a city employee for the tape recording of the city’s hearing on the requestor’s appeal of a disciplinary action. You seek to withhold the requested information under section 552.101 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. You advise that the requested tape recording was made in a closed meeting of the city’s Personnel Appeal Board pursuant to the provisions of the Open Meetings Act, chapter 551, Government Code. *See* Gov’t Code § 551.074 (unless employee requests public meeting, meeting on personnel disciplinary matter may be held in closed meeting). You contend that section 551.104 of the Government Code prohibits release of the tape to the requestor here.

You explain that the city’s Personnel Appeals Board, consisting of two city council members and a citizen, “is the final appellate body for employees appealing adverse disciplinary actions,” and that its meetings “are held in conformance with the Texas Open Meetings Act.” *See* Gov’t Code § 551.001 (3)(D) (“governmental body” subject to Open Meetings Act includes “a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality”).

Section 551.104(c) of the Open Meetings Act provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order*

issued under Subsection (b)(3)." (Emphasis added.) Thus, such information cannot be released in response to an open records request. See Open Records Decision No. 495 (1988). Accordingly, the city must withhold the requested information under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

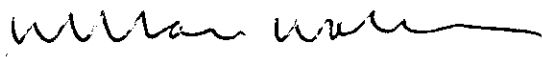
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹We note that the requestor, in a letter to this office, contends that she should have the same right of access to the tape recording at issue here as she does to her own personnel file. A public employees generally has a "special right of access" to his personnel file under section 552.023 of the Government Code, which provides that information may not be withheld from an individual on the basis of exceptions to disclosure intended to protect only such person's own privacy. The provisions of the Open Meetings Act prohibiting disclosure of a tape of a closed meeting, however, were clearly intended to serve other purposes than privacy protection, i.e. the preservation of evidence and the promotion of free discussion at the closed meeting. Thus such a tape recording would not be available under a "special right of access." We do note, however, that the requestor would be able to gain access to the tape recording if she secured a court order that it be made available to her. See Gov't Code § 551.104(b)(3), (c).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 132416

cc: Ms. Jo Ann Cambron
Utilities Department
P.O. Box 1152
Midland, Texas 79702
(w/o enclosures)